DOCUMENT RESUME

ED 452 802 IR 020 610

AUTHOR Kelley, Kimberly B.
TITLE Courseware Development for Distance Education: Issues and Policy Models for Faculty Ownership.
PUB DATE 2000-10-00
NOTE 18p.; In: EDUCAUSE 2000: Thinking IT Through. Proceedings and Post-Conference Materials (Nashville, TN, October 10-13, 2000); see IR 020 605.
AVAILABLE FROM For full text: http://www.educause.edu/conference/e2000/proceedings.html. For full text: http://www.educause.edu/asp/doclib/abstract.asp?ID=EDU0015.html.
PUB TYPE Reports - Evaluative (142) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS College Faculty; *Copyrights; *Courseware; Distance Education; *Educational Policy; Educational Practices; Educational Technology; Higher Education; Information Policy; Instructional Design; *Intellectual Property; *Ownership; Policy Formation

ABSTRACT

The issue of who owns courseware is of great concern to faculty and universities. Until recently, when technology entered the picture, the issue was straightforward: faculty typically held copyright with everything except patents. One of the most interesting and complex issues of intellectual property in the digital environment is faculty ownership of online courses, sometimes referred to as courseware. Regardless of the type of institution, intellectual property policies that address ownership are essential to ensure incentives to create courseware, avoid litigation, and avoid competition between institutions. This paper provides an overview of current policies of higher education institutions concerning faculty ownership. The paper discusses the issues that universities should consider when creating intellectual property policies that address the emerging area of courseware development and reviews the current models available for adaptation. Examples currently in use for faculty ownership are also presented. (AEF)

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ED 452 802

Courseware development for distance education: Issues and policy models for faculty ownership

Kimberly B. Kelley
University of Maryland, University College

Introduction

The issue of faculty ownership in higher education has been somewhat sedate until the last few years. Until recently, the issue was straightforward, faculty typically held copyright with everything except patents. Until technology entered the picture, this was the policy arrangement university administrators, either explicitly or implicitly, maintained with their faculties. With the advent of the Internet, and in particular the capabilities of the World Wide Web (Web), issues of intellectual property have once again become the basis for discussion and debate. One of the most interesting and complex issues of intellectual property in the digital environment is faculty ownership of online courses, sometimes referred to as courseware. In the forums where the issue of ownership is discussed, very strong opinions come forth from both the administration and faculty on who should hold copyright and each constituent group makes it clear they are concerned with protecting their investment in the final product (Carnevale, 1999; The Node Learning Technologies Network, 1999; Twigg, C., 2000).

On the face of it, it would appear that there is a deep chasm between the two groups and both sides have legitimate concerns. Recent position papers on faculty ownership demonstrate the extent to which differences of opinion exist concerning faculty ownership of digital courses. For example, the American Association of University Professors (AAUP) developed a statement on copyright

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(http://www.aaup.org/spccopyr.htm). In their statement, they assert that "it has been the prevailing academic practice to treat faculty members as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes. Examples include class notes and syllabi, books and articles, works of fiction and nonfiction, poems and dramatic works, musical an choreographic works, pictorial, graphic, and sculptural works, and educational software, commonly known as 'courseware.'" (AAUP, 1999). In contrast, the Association of American Universities (AAU) states "the university should own the intellectual property that is created at the university by faculty, research staff, and scientists and with substantial aid of its facilities or its financial support." (AAU, 1999). With such conflicting positions, it would appear that the policy formulation process will be difficult and that the two sides of the issue have very strong opinions that will be difficult to resolve.

The Internet and the Web

The advent of the Web had an important role to play in causing academic institutions to revisit the question of ownership. Unlike the traditional face-to-face classroom, where a professor's notes, PowerPoint slides, and other course materials do not have coherency until the faculty provides the pedagogical link, the online course can be a stand-alone commodity. In the majority of cases, it is a tangible product that can include myriad products such as Web pages, video clips, packaged readings, animation, and simulations that together create a package that is tangible and marketable. In the view of faculty, even though the online course is a tangible product, it does not have coherency until the faculty provides the intellectual "glue" (Carnevale, 1999; Twigg, 2000, p. 15). However, there are many examples of online courses being offered where

multiple individuals, all of whom are roughly equally qualified to provide the intellectual links as the originator of the course, teach an online course. As a result, debating whether the online course can be delivered in the absence of the creator is less of an issue than deciding how to address the ownership and use question for what is already a marketable commodity in use at many institutions using myriad types of agreements with their faculty.

Revenue vs. Control: Two sides of the Coin

How did the ownership question surrounding online courses become so important? The reasons are essentially two fold: revenue and control. In the view of many institutions, there is the possibility of significant financial gain through offering an online course, degree program, or certificate. The possibilities for how to benefit from the online course are many and include: 1) reaching a new student population currently untapped, 2) offering a single course in multiple sections without the need for classroom space, 3) licensing the course externally and receiving royalties, 4) increasing the number of enrollments in a single course, and 5) combining a few online courses in a novel manner to create a certificate that allows students to have a "product" without having to pursue an entire degree. All of the uses of the course represent increased "efficiencies." As a result, the online course represents a profitable return on the resources invested to develop and deliver an online course. The potential revenue stream that online courses have is important to academic institutions that are constantly seeking new avenues to support the academic enterprise. Further, online courses that have the potential to keep institutional costs constant while exploiting the institution's intellectual property are particularly important.

In recent Pew symposia on the topic of ownership, the attendees defined the revenue question as the "gold mine scenario." (Twigg, 2000, p. 17). In the view of the conference attendees, the likelihood that institutions or their faculty will get rich, was roughly equivalent to winning the lottery or garnering significant financial benefits from the royalties on the sale of a textbook. From the perspective of traditional institutions of higher learning, the preponderance of the attendees at the Pew symposium, that perspective makes sense. Traditional institutions may be offering online courses, but they are not the primary mission of the university. However, from the perspective of institutions doing significant delivery of online courses, and pursuing business ventures for marketing and delivering their online courses more widely, the potential profit is real and ownership plays a critical role in determining the extent to which the institution and its faculty benefit from the development and delivery of the online course.

The second issue, control, has to do with academic freedom, quality, and faculty concerns about their profession. In particular, the fear faculty have that online courses mean that fewer faculty will be employable and institutions of higher learning will be able to "do more with less."

According to a recent report on faculty views, "many faculty believe that if their institution owns their work, their academic freedom is jeopardized." (The Node Learning Technologies Network, p. 16). From the viewpoint of many faculty, ownership is directly tied to academic freedom. If the institution owns their work, there is the possibility that their employer might want to have a greater say in their work products. For example, institutions might want to edit faculty work, or give faculty "suggestions" for changes. The equivalent of this in the online course environment might be having an

instructional designer rewriting an online lecture because the faculty's opinion is considered to inflammatory and as a result, could affect the "marketability" of the final courseware product. The portability of digital work, and the ease of making changes to digital content, heightens faculty awareness of the academic freedom issue and online courseware.

A second issue involved in control is the issue of quality. There is a concern among faculty that once the control is transferred to the university, the quality of the product could be jeopardized. Or, the original product, that was up-to-date when it was created, could become outdated and the faculty originator could find he is still mentioned as the author. In the same vein, the faculty member might be held responsible for the content without knowing the content is still being delivered elsewhere at the university. Faculty want ownership so they have the right to update the content, ensure the accuracy of the facts presented in the course content, and respond to developments in the field as they occur and need to be incorporated into the course. In the view of many faculty, if they do not have ownership, then it is possible they would not have the authority needed to ensure that their original work product continues to have the same academic integrity it had when it was developed.

Another issue involved with quality revolves around an institution's decision to license a course to other institutions. If a separate institution has control, the faculty creator might not have a say over how the course is licensed or whether the same quality measures are in place at the institution licensing the course. Also, once sold, the online course is the property of another institution and their quality controls may be quite

different than those the faculty member would like to be in place when the course is offered.

Another control issue surrounds the concept of doing more with less, or achieving efficiencies through the use of online courses. Essentially, this viewpoint argues that faculty can be replaced, or their numbers diminished, because fewer people are needed to deliver the course, or, the institution can substitute part-time faculty for full-time faculty but offer an equivalent online course. The use of part-time faculty would decrease the institutions overhead and makes the delivery of the course cheaper. Taken to its extreme, this view also suggests that in some cases, courses will no longer require a faculty member at all if the technology is sophisticated enough. This view has been referred to as the "player piano" syndrome (p. 19). In this syndrome, the faculty could be readily interchanged, or no instructor would be needed. In the view of some, this scenario was unlikely. The reason for believing this is that the faculty member represents an essential element of quality. The better quality courses require interaction and in the view of the participants at the Pew symposium, "people don't go to college to get 'canned courses.'" (Twigg, 2000, p. 19).

There can be no doubt that quality online education includes a high degree of interaction. It is an essential element and provides an important part of the learning experience. However, it is difficult to measure the quality of the online course with that of the traditional classroom. Some online courses offer enhancements unavailable in the face-to-face classroom that improve learning and in some cases, make them superior to the traditional delivery methods. Further, a dynamic, well-designed online course with

an average faculty member may well be superior to a face-to-face course with an average faculty member.

The Institutional Perspective

While faculty have legitimate concerns, so do the institutions developing and delivering online courses and programs. In the view of some institutions, faculty are not the exclusive creators of online courses. In such cases, including at the University of Maryland, University College, the faculty member is one of several individuals who contribute to the final product or "courseware." The faculty member is part of a team; he is not the only individual making a significant contribution to the final product. Therefore, the idea of one individual being the "creator" is questionable when so many contributed their talents and abilities to create a high-quality online course. At what point is the faculty member no longer the creator? This is a question that is difficult to answer and must be addressed in policy. However, institutions want the involvement of everyone considered in the decision on whether the faculty member is the creator and if so, what that means in terms of rewards and use of the final product.

Further, there is the issue of the institution's costs to develop and deliver the online course. There are many estimates of what it costs to develop an online course. They range from $25,000 to $50,000 depending on the discipline and the extent to which multimedia is incorporated. In my view, these estimates are conservative. Institutions see their investment in courseware as being similar to the investment they make to obtain a patent. Therefore, they have a right to own courseware also. Typically, faculty do not own patents, they receive royalties instead. From an institutional perspective, the same agreement applies in the case of courseware. If the cost to the institution is significant,

then the institution has an interest in ownership and is also very concerned about the return on its investment in the course. Delivering online courses may not be as lucrative as some suggest, but even so, institutions want to maximize their return, no matter how small it may be, to attempt to be efficient with the use of limited resources.

Another issue of concern for institutions, which also revolves around return on their initial investment, is licensing to external organizations. The process of licensing is complicated and few institutions have done it successfully. However, should an institution find a niche and an opportunity to distribute their courseware beyond the confines of their institution, they want the ability to do this to serve their community and potentially make a profit on the developed course while it is a viable product for sale. Courseware has a shelf life. Therefore, institutions need the flexibility to maximize their profit on the product before it is obsolete or in need of revision which requires additional investment by the institution and the creators.

Institutions are also concerned about faculty ownership and the resultant possibility of conflict of interest or competition. For example, the Arthur Miller case at Harvard University illustrates the complexity of the ownership question (Carnevale, 1999). In that case, Miller sold his videotaped lectures to Concord University. The current Harvard University intellectual property policy did not preclude this because Miller owned his tapes. However, selling the videotapes did represent a conflict of interest. Miller sold what could result in a loss for Harvard because potential students may decide to seek the degree with Concord, not Harvard. In this instance, it is unlikely. However, for lesser known institutions, small advantages in the market are important and can tip the scales in favor of one over the other.

Policy Issues

Most institutions and their faculty think the central question is ownership. However, the essential question is what rights each party takes away from the transaction. There are many policy models where ownership resides with the institution (e.g., Athabasca University, the Open University, and the University of Phoenix). It is interesting to note that the institutions that vest ownership in the institution are also the ones heavily involved in distance education and highly regarded in the field. However, there are far more institutions where ownership resides with the faculty member; which is more in line with traditional policy on intellectual property in higher education. During the recent revision of the University System of Maryland (USM) intellectual property policy, I have come to the conclusion that it is simplest and least controversial to begin with the notion that ownership resides with the faculty member, particularly if it has been the policy to have faculty ownership at the institution previously and the notion of faculty ownership is generally accepted. Giving faculty ownership, however, does not mean the institution has rescinded all rights to the works. On the contrary, ownership is far less important than who has the right to do what and in what time frame.

In the case of the University of Maryland System's recently revised policy, which includes the 13 campuses of the University of Maryland, ownership resides with the faculty member for traditional scholarly works developed using "usual and customary" resources. In the USM policy, "usual and customary" resources are defined as being "items provided routinely to all members of the personnel group at the unit level, such as office space, library facilities, or ordinary access to computers and networks. Additional items are not usual and customary unless otherwise specified in writing at the time of

provision of the resource" (USM, 2000, p. 2). In the event that the faculty member and the institution differ on their definition of what is "usual and customary" the two parties are expected to hash out their differences at the inception of the project and develop an agreement that is equally acceptable to both parties. Further, the policy encourages the use of agreements between the faculty member and the institution that specify the rights of each party in the development of the project. It is at the point of developing an agreement that the institution and the individual can define the rights of each party and thereby ensure that what the institution and the individual need are taken into account with respect to intellectual property.

Tips on Defining Ownership. When developing a policy on ownership, it is important to consider the issues outlined below. The administration and the faculty need to come to agreement on these issues if the policy is to be useful and viable for all concerned.

When institutions seek to define ownership of courseware, they should take into account the following questions and issues:

- **The policy needs to explicitly state the underlying assumptions concerning ownership in the policy**. Who has ownership of intellectual property according to the policy? Institutions involved in distance education tend to favor ownership residing with the institution. Others begin with the notion that ownership resides with the faculty member. Whatever the decision, a choice needs to be made and clearly stated.

- **The policy needs to define how ownership will be shared and under what circumstances**. In deciding how to address ownership, there are three predominant models that provide a good template for deciding the issue.

In the first model, the institution asserts ownership but faculty are readily granted licenses to use the information provided it does not compete with the institution's use of the information. In the second model, the faculty have ownership but there are exceptions such as when the faculty exceed "usual and customary" use of institutional resources or when the intellectual property was created under a grant funded by the institution. In the second model, the policy defines ownership and then lists the exceptions to faculty ownership. The exceptions should be clearly stated.

The third model uses categories of ownership. Who owns what is defined by whether the work falls into the faculty-owned or institutionally-owned category. For example, in the USM policy, independent work is a category where faculty have ownership. Directed work is a category in which the institution asserts ownership. If this model is chosen, the policy will need to define the categories and then be clear when the work created fits in one category or the other.

It is possible to use more than one model also, if appropriate. The University System of Maryland's (USM) newly revised policy begins with the underlying assumption that ownership resides with the faculty member. The policy then utilizes two of the possible models. First, it provides categories where faculty own and do not own the intellectual property. In addition, the USM policy provides exceptions to faculty ownership when they use more than "usual and customary" resources. Both categories

and exceptions were included because the university community felt that both were needed (USM, 2000).

In another case, Wilfrid Laurier University offers faculty a set of three choices concerning their ownership. In the first option, the faculty member may elect to keep copyright ownership but must also assign the university a non-exclusive, royalty-free license to use the material. If the faculty member selects the second option, he assigns copyright ownership to the university but retains certain rights of use. In the third option, he assigns ownership outright to the university. The financial gain for the faculty member increases as she goes from option one to three with three having the most money associated with it. This innovative approach seems to work well for the university and gives faculty a choice on how their intellectual property is handled (The Node Learning Technologies Network, 1999).

- **The policy must define what ownership rights students and non-faculty employees will have, if any.** The University System of Maryland (USM) does not assert rights over student ownership but does assert ownership of employee work including student employees.
- **The policy must specify revenues**. A policy dealing with courseware ownership must define the conditions under which the distribution of revenues is applicable and define the terms under which they will be shared. Further, the forms of revenue are more complex than most policies currently cover. For example, what is considered to be revenue? Does it include equity? Bequests? The types of revenue and how it will be shared must be addressed for the ownership question

to be successfully dealt with. In the case of the USM, we decided tuition was not revenue. This was an important exclusion from revenue sources.

- **The policy must address the issue of competition**. For the ownership issue to be resolved, it is important to include a reference to whatever policy the institution has on competition. Further, the policy needs to ensure that wherever ownership resides, creators will not use their intellectual property to compete directly with the institution's activities and programs. When faculty own the intellectual property, they may take their materials with them. Institutions need to define if there are to be limitations on how soon faculty can use materials in a similar or identical manner after they leave that may disadvantage the institution they are leaving. Specific agreements can address this issue but the institution also needs to ensure that a competition policy exists, that it is reviewed in the course of developing an ownership policy, and up-to-date to handle such a possibility.
- **The policy must specify the role of agreements between faculty and the institution.** It is important to have the policy handle the majority of questions concerning ownership. Having an agreement for every instance would be too time consuming. Therefore, the policy needs to define when an agreement is used and whether the agreement takes precedence over the policy. Further, institutions should develop a boiler plate agreement for faculty courseware development and ensure that they can be altered to meet different faculty needs. Kenneth Crews, at Indiana University Purdue University Indiana (IUPUI), has an example of a courseware contract that is innovative and forward thinking. A policy on

ownership should be accompanied by agreements that are standardized but flexible for negotiations between the faculty member and the institution.

The points mentioned here are the major issues that come up when developing or revising policies to address the issue of faculty ownership of courseware. It is important to begin a dialogue early, before distance education is a major initiative, to ensure faculty have incentives to create materials and the institution has the necessary protections it needs to support distance learning initiatives. The greatest difficulty is getting the dialogue started and keeping it focused on balancing the needs of both sides. Agreement can be reached. However, the issues may be contentious and require significant work and consensus building locally.

It is unlikely anyone will get rich in distance education. Further, it is rare when institutions find their courses being offered elsewhere by a former faculty member; or are likely to have faculty replaced by robots. However, these issues form the myths that make agreeing on the issue of intellectual property ownership difficult. Establishing clear policies is essential to, 1) the creation of high quality courses, 2) to ensure the commitment of the institution to delivering these programs, and 3) to decrease the likelihood of disagreements that end up in litigation. Everyone on campus can benefit from discussing the ownership issue and once a policy is in place, Web-based education can thrive and grow.

References

American Association of University Professors (AAUP). *Draft statement on copyright.* Washington, D.C.: Author. Retrieved July 31, 2000 from the World Wide Web: http://www.aaup.org/spccopyr.htm.

Association of American Universities (AAU). (1999, May 13). *AAU Intellectual property task force report on intellectual property and new media technologies.* Retrieved August 4, 2000 from the World Wide Web: http://www.tulane.edu/~aau/IPNewMediaReport.html.

Carnevale, D. & Young, J. (1999, December 17). Who owns online courses? Colleges and professors start to sort it out. pp. A45.

Leibowitz, W.R. (2000, January 21). Law professors told to expect competition from virtual learning. The Chronicle of Higher Education, pp. A45.

The Node Learning Technologies Network. (1999, Fall). The rights stuff: Owenership in the digital academy (Learning Technologies Report). St. Catharines, ON Canada: Author. (http://theNode.org).

Twigg, C. (2000). Who owns online courses and course materials? Troy, New York: Rensselaer Polytechnic Institute: Center for Academic Transformation. (http://www.center.rpi.edu).

University System of Maryland (USM). (2000, Fall). Draft Revised Policy on Intellectual Property. (http:// ipc.usmd.edu).

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Organization:	University of Maryland, University College
Year:	2000
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